IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY SIXTH DAY OF APRIL

TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE P.S. NARAYANA

WRIT PETITION NO. 9878 of 2002

Between:

T. Shambhoji Rao s/o Narayana Rao, aged 54 years, Divisional Forest Officer, Office of the Divisional Forest Office, Flying Squad Division, Andhra Pradesh, Hyderabad.

..... PETITIONER

AND

1. The Government of Andhra Pradesh rept,. By its Principal Secretary,

Environment, Forest, Science and Technology Dept, Secretariat Buld.

Hyderabad.

2. The Secretary, Andhra Pradesh Public Service Commission,

Gruhakalpa Complex, Nampally, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ of mandamus calling for the records pertaining to selection of Assistant Conservator of Forests of 1976 recruitment and the connected files thereto including the Impugned Memo. No. 10332/FOR.V/2000-3, dated: 12.4.2001 and quash and set aside the same by holding and declaring that the candidates who availed age concession based on their community, reservation cannot be appointed against O.C. vacancies without fulfilling the condition of age requirement meant for the open competition and further declare that the petitioner is entitled to be considered for appointment as Assistant Conservator of Forests in 1976 Recruitment and further direct the respondents to grant the petitioner all the consequential benefits such as Notional Seniority etc. as confirmed by the Hon'ble A.P. Administrative Tribunal, Hyderabad in O.A.No. 2692/2001, dated: 4.5.2002 is illegal, arbitrary, unconstitution and set aside the same.

Counsel for the Petitioner: MR. Nooty Ram Mohan Rao & MR. P.V. Subrahmanya Sarma.

Counsel for the Respondent No.1: G.P. for Services-I

Counsel for the Respondent No.2: MR. M. Vijaya Kumar

The Court made the following:

J U D G M E N T :

(per G. Bikshapathy J)

1. The Writ Petition is filed calling in question the Order passed by the Andhra Pradesh Administrative Tribunal in O.A.NO. 2692 of 2001, dated: 4.5.2002.

2. Petitioner is the applicant before the tribunal. He filed O.A. challenging the Order passed by the Government in Memo No. 10332/FOR.V/2000-3, dated: 12.4.2001 and for a declaration that the candidates, who availed age concession based on their community reservation cannot be appointed as against O.C. vacancies without fulfilling the eligibility crieterias fixed for the open competition candidates and further declare that he is entitled to be considered for appointment as Asst. Conservator of Forests from 1976 and for consequential benefits.

3. Petitioner was initially appointed as Forest Range Officer on 1.11.1968. While he was working in such capacity, Andhra Pradesh Public Service Commission issued notification in 1976 for recruitment to the post of Asst. Conservator of Forests. They notified 8 vacancies, the break of which is O.C.-5, B.C.-A – 1, S.C. 1, S.T.- 1. The age limit for the O.C. candidates is between 19 to 24 years as on 1.5.1976 and whereas age concession was given to B.C., S.C. and S.T. candidates. In response to the notification, the petitioner appeared for the selection and was placed in No.3 among the O.C. candidate. But, however, since 3 B.C. candidates got higher marks, they were fixed in the O.C. slots and thus the petitioner became No.6 with the result (since there was only five vacancies) he could not get the selection. It is also the case of the petitioner that 3 B.C. candidates who were selected in O.C. category was S. Balakrishna, D. Satyanarayana and B. Trinath Rao, who did not possess the requisite age as fixed for O.C. candidates. But, however, by virtue of the age relaxation granted to them, they were brought into the recruitment process. Petitioner was also in service candidate and he had also got the advantage of 5 years age concession. However, the petitioner did not make any representation immediately complaining non-selection. But, it appears that the petitioner was subsequently promoted as Asst. Conservator of Forests.

4. However, seniority list was prepared in the cadre of Asst. Conservator of Forests in 1988 and certain objections were raised by the other officers. The petitioner having come to know that the very appointment of B.C. candidate in the O.C. slots is contrary to the rules, he made a detailed representation to the authorities on 31.10.2000. Since the said representation was not considered, he filed O.A.NO. 1035 of 2001 and the same was disposed of by the tribunal by an Order dated: 10.2.2001 with the following directions:

> **"Considering the submissions made by both the parties the 1st respondent is directed to examine the representation of the applicant as per rules and pass appropriate Orders within a period of three months from the date of receipt of this Order. The O.A. is disposed of accordingly at the admission stage."**

Consequently on the directions of the tribunal, the petitioner approached the Government and the following Orders were passed in Memo No. 10332/FOR.V/2000-3, dated: 12.4.2001:

> "**With reference to the representation of Sri T.Shambhoji Rao, Assistant Conservator of Forests, cited (1) above, he is informed that his request was examined in consultation with Andhra Pradesh Public Service Commission.**
>
> **He is also informed that the selections of reserved candidates against O.C. vacancies was done in accordance with the rules and the selection list needs no change or revision."**

Aggrieved by the said decision of the Government, he filed O.A.NO. 2692 of 2001. The said O.A. was dismissed by an Order dated: 4.5.2002 holding that the relief claimed by the petitioner was barred by time. However, the tribunal did not go into the merits of the case. Challenging the said Order, the present Writ Petition has been filed.

5 . The learned counsel for the petitioner Mr. Nooty Ram Mohan Rao seriously contends that the tribunal has completely misconstrued the scope of Section 21 of Andhra Pradesh Administrative Tribunal Act. He submits that the representation was made to the Government for the first time in 2000, when the seniority list was published. Till such time, no seniority list was published and therefore, there was no occasion to seek proper fixation of seniority. Even when the said representation was not considered, he has to approach the tribunal and on the directions of the tribunal the matter was considered on merits and the Government passed Orders dated: 12.4.2001 after consulting the Public Service Commission and the said Order came to be challenged before the tribunal. Therefore, the tribunal ought to have concentrated as to the Order of rejection passed by the Government was in

accordance with rules. But, on the other hand, the tribunal delved on the question of latches and dismissed the O.A. on the ground of limitation. He submits that the limitation would not arise in this case as the Order was passed by the Government on merits on 12.4.2001 and the said Order came to be challenged with consequential benefits. Even on merits also, he submits that the other three candidates belonging to B.C. category got a slot on merits in O.C. category. In such a situation, they should fulfil the qualifications required for the appointment under O.C. category and since B.C. candidates referred to above appeared for the recruitment by getting the age concessions in such an event, they should only go into the respective reserved slots and they cannot be allowed to enter the O.C. slot. If they had necessary qualifications on par with the O.C. candidates then there could have been no objections, but they cannot be given dual advantage namely relaxation of age as well as the slot in the O.C. category. He relies on the decisions of the Supreme Court reported in SUALAL YADAV Vs. STATE OF RAJASTHAN, SANTOKH SINGH Vs. STATE OF PUNJAB, UNION OF INDIA Vs. DR. S. KRISHNA MURTHY, SUBORDINATE SERVICES SELECTION BOARD Vs. BIR SINGH and ANIL KUMAR GUPTA Vs. STATE OF U.P..

6. On the other hand, the learned counsel appearing for the A.P.P.S.C. and the learned Government Pleader submits that the relief as claimed by the petitioner was highly belated and nothing prevented the petitioner from agitating the same as soon as he was not selected and therefore, the Order passed by the tribunal is quite legal and valid. It is also stated that the candidates, who were selected in 1976 were appointed in the regular Government service after completion of two years at Forest Services Training-cum-Research Institution. It is also stated in the counter that the selections were made in accordance with the rules and both the affirmative action and reservations are permissible under law and there cannot be any legitimate grievance by the petitioner at this point of time.

7. The issue that arises for consideration is whether the Order passed by the tribunal

in rejecting the application on the ground of limitation is sustainable?

8. The facts are not much in dispute as referred to above. The tribunal after taking into consideration the Order passed by the Government and also the dicta laid down by the Supreme Court in Sualal Yadav's case(1st cited supra) held that O.A. cannot be dismissed on the premise that there was delay in approaching the Government. The tribunal in this regard observed as follows:

> **"In this case, the delay and laches on the part of the applicant is in approaching the tribunal for redressal which is under examination. We are not proposing to dismiss the O.A. on the ground that there was delay on the part of the applicant in approaching the Government for redressal of grievance.**

The tribunal referred to Section 21 and observed that limitation of one year was prescribed for invoking the jurisdiction of the tribunal. The tribunal reckoned the limitation from 1976 when the petitioner was not selected. Taking that into consideration, the tribunal held that it is barred by limitation. But the moot question is that the petitioner is challenging the Order passed by the Government. He has to necessarily avail the remedy before the Government and then only he has to approach the tribunal for ultimate relief. It is clear case of the petitioner that he came to know for the first time that seniority list in the cadre of Asst. Conservator of Forests was prepared in 1998 and thereupon he made a representation for fixing the proper notional seniority giving reasons which have been extracted supra. Therefore, what in effect is the challenge to the Order passed by the Government on 12.4.2001. The grievance is that the Government considered the matter on merits and therefore, the petitioner is entitled to challenge the Order of the Government. What relief enures to the petitioner is a different aspect. Unless, the Order of the Government is interfered with the question of relief would not arise. Therefore, we find that the Order of the tribunal holding that the limitation commences from 1976 when other candidates were selected cannot be said to be laying down good law. It is also to be noted in this regard when the petitioner approached the tribunal on the earlier occasion, the same was disposed of with a directions to dispose of the representation in

accordance with rules. In such a situation, having directed the Government to consider the matter and the Government having not rejected the case on the ground of laches but on merits after getting information from the Public Service Commission, we find yet on this ground also the Order of the tribunal is not sustainable.

9. Under those circumstances, we hold that the Order is liable to be set aside. Accordingly, we do so. Since the tribunal has not considered the matter on merits, we direct the tribunal to dispose of the O.A. on merits after hearing the parties. It is made clear that we have not decided any issue relating to the merits of the case.

10. Accordingly, the Writ Petition is allowed. The Order of the tribunal is set aside and the matter is remitted for disposal as directed above.

11. We do hope that the matter will be decided by the tribunal as expeditiously as possible within a period of three months from the date of receipt of a copy of this Order.

12. No costs.

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G.BIKSHAPATHY, J

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P.S. NARAYANA, J

26-4-2005

CHV

L.R. COPY TO BE MARKED: No

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki, the Acting Chief Justice on this Tuesday the twenty sixth day of April, Two thousand and Five.

ASST. REGISTRAR

....REGISTRAR

//**TRUE COPY**//

SECTION OFFICER

ONE FAIR COPY TO THE ON'BLE MR. JUSTICE G. BIKSHAPATHY

(FOR HIS LORDSHIP'S KIND PERUSAL)

ONE FAIR COPY TO THE ON'BLE MR. JUSTICE P.S. NARAYANA

(FOR HIS LORDSHIP'S KIND PERUSAL)

To

1. Principal Secretary, Government of Andhra Pradesh,

Environment, Forest, Science and Technology Dept, Secretariat

Buld. Hyderabad.

2. The Secretary, Andhra Pradesh Public Service Commission, Gruhakalpa Complex, Nampally, Hyderabad.

3. Copy to MR. P.V. Subrahmanya Sarma, Advocate for the Petitioner (OPUC)

4. Copy to G.P. for Services-I, High Court Building. (OPUC)

5. 2 C.D. copies.